

CERTIFICATE OF MAILING

I hereby certify that on 7-9-02 this paper (along with any paper referred to as being attached or enclosed) is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to: Commissioner for Patents, Washington, DC 20231.


Trudi Thompson

Applicant: **Fitzhugh et al.**
Serial No.: **09/972,219**
Filed: **10/04/2001**
Title: **HIGHLY CROSS-LINKED,
EXTREMELY HYDROPHOBIC
NITRIC OXIDE-RELEASING
POLYMERS & METHODS FOR
THEIR MANUFACTURE & USE**
Group Art Unit: **1616**
Examiner: **Unknown**
Docket No.: **17363.20**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

DECLARATION OF FACTS IN SUPPORT OF FILING ON
BEHALF OF OMITTED INVENTOR (37 C.F.R. § 1.47(A))

Commissioner of Patents
Washington, D.C. 20231

Sir:

This Declaration is made as to the exact facts that are relied upon to establish the diligent effort made by the co-inventors and their attorney of record to obtain the missing co-inventor's comments and approval of the subject U.S. patent application prior to deposit thereof with the U.S. Patent and Trademark Office. Furthermore, the Declaration is made as to the exact facts relied upon to establish the diligent effort the co-inventors have continued to make to secure the execution of the Declaration by the omitted inventor for the above-identified patent application.

This Declaration is being made by the available co-inventors as required under 37 C.F.R §1.47 (a).

IDENTIFICATION OF PERSONS MAKING THIS DECLARATION OF FACTS

Name of Declarant:	Robert Cafferata, Ph.D., Co-inventor
Address of Declarant:	4794 Hillsboro Circle, Santa Rosa, CA 95405
Name of Declarant:	Larry K. Keefer, Ph.D., Co-inventor
Address of Declarant:	7016 River Road, Bethesda, MD 20817

LAST KNOWN ADDRESS OF THE OMITTED INVENTOR

Name of omitted inventor: Anthony L. Fitzhugh, M.D.

Last known address of omitted inventor: 2117 Independence St., Frederick, MD 21702

DETAILS OF REFUSAL OF OMITTED INVENTOR TO SIGN APPLICATION PAPERS

1. Dr. Anthony L. Fitzhugh was a federal contract employee working in the laboratories of Dr. Larry K. Keefer at the National Institutes of Health at the time the invention was conceived and reduced to practice as disclosed in United States Patent Application Serial Number 09/972,219.
2. Dr. Fitzhugh was under an obligation to assign his inventions to the Federal Government at the time of the invention.
3. The Declarants and co-inventors, through their attorneys of record, have diligently attempted to obtain Dr. Fitzhugh's signature on the Combined Declaration, Power of Attorney and Petition.
4. Dr. Fitzhugh has been given substantial opportunities to sign the Combined Declaration, Power of Attorney and Petition as evidenced by the attached exhibits.
5. For reasons personal to Dr. Fitzhugh and unknown to the Declarants, Dr. Fitzhugh has not signed the Combined Declaration, Power of Attorney and Petition.

PROOF OF THE PERTINENT FACTS

EXHIBITS

Exhibit 1. Letter dated August 8, 2000 from the Declarant's attorney to Dr. Fitzhugh asking for his comments on the draft application.

Exhibit 2. U.S. post office Express Mail Certificate number EL173053293US evidencing that the letter in Exhibit 1 was sent to Dr. Fitzhugh.

Exhibit 3. January 4, 2001 E-mail demonstrating that an electronic copy of the Application was sent to Dr. Fitzhugh for his review and comments.

Exhibit 4. March 14, 2001 e-mail from Dr. Fitzhugh demonstrating he received and was commenting on the application. (Note: U.S. patent application serial number 09/972,219 was referred to as the "Jordi" application as a shorthand internal designation.)

Exhibit 5. September 27, 2001 e-mail demonstrating that a final draft of the application incorporating Dr. Fitzhugh's changes was sent to Dr. Fitzhugh.

Exhibit 6. November 5, 2001 letter sent Federal Express to Dr. Fitzhugh requesting his signature on the Combined Declaration, Power of Attorney and Petition.

Exhibit 7. November 13, 2001 letter from Dr. Fitzhugh to the Declarant's attorney acknowledging receipt of the final draft application and Combined Declaration, Power of Attorney and Petition.

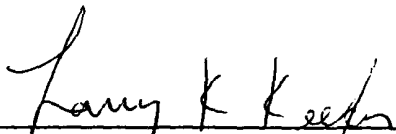
Exhibit 8. November 20, 2001 letter from Declarant's attorney to Ms. Jill S. Sugden as requested by Dr. Fitzhugh in his November 13, 2001 letter to Declarant's attorney demonstrating compliance with Dr. Fitzhugh's requests.

CONCLUSION

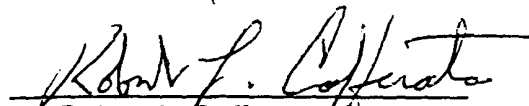
The Declarants respectfully assert that their co-inventor, Dr. Anthony L. Fitzhugh was provided with opportunity to review patent application number 09/972,219 before filing and diligently attempted to have Dr. Fitzhugh sign the Combined Declaration, Power of Attorney and Petition required to complete the application process. Dr. Fitzhugh has not to date signed the Combined Declaration, Power of Attorney and Petition therefore necessitating this petition pursuant to 37 C.F.R. §1.47 (a).

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both under Section 1001 of Title 18 of the United States Code and that such statements may jeopardize the validity of the application or any patent issued thereon.

Dated: 6/20/02


Dr. Larry K. Keefer, Co-inventor

Dated: 6-27-02


Dr. Robert L. Cafferata, Co-inventor